

**MINUTES OF THE DECEMBER 2010 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, December 14, 2010, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Nathan Reichert, and Linda Upmeyer were present. Representative Tyler Olson was not present.

Also present: Joseph A. Royce, Michael Duster, and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Acting Administrative Code Editor; James Larew, Administrative Rules Coordinator; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 9:30 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report. On behalf of the fiscal services division, Ms. Lerdal thanked Rep. Frevert and Rep. Reichert for their service.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF Matt Rasmussen represented the department.

ARC 9255B Proposed ch 77 pertains to a site development program to establish an inventory of sites in Iowa that may be suitable for development or redevelopment and to provide consultation to local governments about site development techniques. Mr. Rasmussen reported that the department will work with the departments of natural resources and transportation in the development of the program.

MANAGEMENT DEPARTMENT Shanell Wagler represented the department.

ARC 9222B No questions on proposed ch 9 pertaining to fiscal oversight of the early childhood Iowa initiative.

ENVIRONMENTAL PROTECTION COMMISSION Marnie Stein, Catharine Fitzsimmons, Anne Preziosi, Wayne Gieselman, Lori McDaniel, and Christine Paulson represented the commission. Other interested parties included Bob Haug on behalf of the Iowa Association of Municipal Utilities.

ARC 9224B Amendments to chs 22 and 33 are intended to ensure that sources of greenhouse gas (GHG) emissions in Iowa are regulated in the same manner and at the same level as specified in new federal regulations for greenhouse gases, the prevention of significant deterioration (PSD) and the Title V greenhouse gas tailoring rule (tailoring rule).

In a summary of the rule making, Ms. Stein stated that the rule making raises the permitted applicability threshold to 100,000 tons per year (tpy) carbon dioxide equivalent and provides protection to 61,000 businesses and industries that would be subject to Title V permitting and to 410 facilities subject to PSD permitting; 36 facilities will be subject to the tailoring rule. Ms. Stein reported that, on December 10, 2010, the U.S. Circuit Court of Appeals for the District of Columbia denied all motions to stay the tailoring rule and all other GHG-related rules. Ms. Stein noted that, as requested by the committee at its September meeting, the department has provided an informal regulatory analysis to address the cost to affected sources that apply for and comply with Title V permits.

Ms. Fitzsimmons stated that, if the rules are not implemented, DNR would not be able to issue any valid federal permits after January 2, 2011. Ms. Fitzsimmons also stated that ethanol facilities not already subject to PSD will not be required to apply for Title V operating permits until July 1, 2012. Mr. Gieselman reiterated that the primary purpose of the rule making is to provide protection to facilities whose emissions are below the threshold for GHG emissions.

Discussion pertained to awareness of new ethanol plant managers regarding the rule making; the permitting thresholds of ethanol plants; clarification of the meaning of tailoring in relation to GHG emissions; the rationale of states that are delaying the adoption of or not adopting the rules; the costs to affected facilities; possible review of the rule making by the prospective director of DNR; the possibility of taking a different approach, such as changing the threshold; and the effects of a delay.

Environmental Protection Commission (cont'd)

- Motion to delay Sen. Bartz moved a 70-day delay on ARC 9224B.
- Motion failed On a roll call vote of four ayes and five nays, the motion failed.
- ARC 9223B Amendments to 61.3(5) incorporate a third group of stream use designations. Ms. McDaniel reported on the process followed in determining the use designations and that changes were made based on public comment.
- ARC 9154B Discussion pertained to the effect of the stream use designations on drainage districts, including governance by trustees, maintenance, upgrades, and related costs, and to the need for a more complete overhaul of the drainage system.
- ARC 9154B Review of amendments to chs 23, 24 and 28, which update state air quality rules by adopting new or amended federal requirements, was held over from the November meeting. At that meeting, the committee imposed a 70-day delay on Items 4 to 7 of ARC 9154B and requested more information regarding the reciprocating internal combustion engine (RICE) emissions standards and how municipal utilities and electricity end users might be impacted.
- Ms. Paulson stated that under RICE, there are no requirements for existing stationary diesel engines until May 2013; that some municipal utilities are planning to retire older engines or will designate them as emergency engines; and that municipal utilities that continue to operate nonemergency engines will be required to comply with RICE limits. Ms. Paulson reported that a recent development may affect how emergency engines operate under RICE: On December 7, 2010, EPA published a notice of reconsideration in the Federal Register to reconsider the 15-hour limit on operating emergency engines for demand-response purposes and provided for a 60-day public comment period. Ms. Paulson stated that EPA requested comment and further information from affected facilities on their demand-response programs and on situations in which engines operate under these programs; EPA will issue a final decision as expeditiously as possible.
- Discussion pertained to the cost of retrofitting and its effect on customers' energy bills and to the timetable for this rule making. Ms. Paulson noted that DNR estimates for retrofitting or replacing nonemergency engines at municipal utilities will be conducted case by case and will likely vary greatly. Ms. Paulson stated that consultation with stakeholders shows that the effect of RICE compliance on electricity rates is unknown at this time and that factors unrelated to RICE, such as fossil fuel costs, will also affect energy rates.
- Mr. Haug reported that interested parties from Iowa will attend the January 13, 2011, EPA hearing about these rules. Mr. Haug expressed concern regarding the costs to municipal utilities, including loss of payments for reserve capacity and the purchase of new capacity, and noted possible changes to be discussed in EPA's reconsideration, including the number of nonemergency operating hours and the definition of what constitutes an emergency.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 9253B No action on amendments to ch 51 to add Det Norske Veritas (DNV), which was recently approved by the federal Centers for Medicare & Medicaid Services (CMS), to the list of hospital accreditation organizations.
- ARC 9252B No action on 51.20, food and nutrition services.
- ARC 9251B No action on 51.50 and rescission of 51.51 and 51.52 pertaining to minimum standards for construction for hospitals.

INSURANCE DIVISION Matt Hargrafen, Jim Armstrong, and Susan Voss represented the division.

- ARC 9228B No action on the rescission of 5.25, annual audited financial reports. Mr. Hargrafen noted that ch 98, annual financial reporting requirements, replaced 5.25.
- ARC 9229B No action on ch 99, limited purpose subsidiary life insurance companies.
- ARC 9231B Ch 110 pertains to standards and commissioner's authority for companies deemed to be in hazardous financial condition. Mr. Armstrong, when asked by Sen. Bartz, confirmed that one change was made to the noticed rules. Sen. Bartz suggested that the division use adherence to model rules as a justification for making no changes only when no changes have been made to the rule making.

Insurance Division (cont'd)

ARC 9158B Review of 36.20, which pertains to rate hearings related to individual accident and health insurance, was held over from the November meeting. Ms. Voss stated that 2010 Iowa Acts, Senate File 2201, requires that public hearings for affected consumers be held regarding rate increases for health insurance if rate increases are above the health inflation rate, currently 6.1 percent. Ms. Voss stated that the original rule making did not make clear that not only the consumer advocate but also the public could comment on the rules; thus, additional public hearings will be held on December 18 and on January 6 regarding Wellmark rate increases. Rep. Frevert suggested that the Iowa communications network (ICN) be used for future public hearings. Sen. Seymour inquired about any gaps in coverage for children in Iowa, to which Ms. Voss replied that the division is in discussion with the industry to establish open enrollment periods.

DENTAL BOARD Gary Roth, chair, represented the board. Other interested parties included David Johnsen, dean; Michael Kanellis, associate dean for patient care; and seniors Ryan Walsh and Kevin Dow, all of the University of Iowa College of Dentistry; and Mary Kelly on behalf of the Iowa Dental Hygienists Association.

ARC 9243B Proposed amendments to chs 11 and 12 are related to the establishment of Central Regional Dental Testing Service, Inc. (CRDTS) as the recognized examination accepted by the board for licensure of dentists and dental hygienists in Iowa. Mr. Roth stated that the board has the statutory authority to select the examination or examinations that are accepted for licensure of dentists and dental hygienists in Iowa and that this rule making reestablishes the board's authority. Mr. Roth noted that the rule making will not affect the examination already scheduled for the current senior class.

Mr. Johnsen expressed concern regarding the specific direction of the rule making, suggested that the board join more than one testing service board, and noted that the decision regarding examinations resides with senior faculty, not with students. Mr. Kanellis expressed opposition to the rule making and concern about its effect on the number of dentists practicing in Iowa and on patients' access to care. Mr. Walsh stated that this change provides students insufficient time to prepare for a different examination. Mr. Dow noted the financial burden that a different examination would impose. Ms. Kelly commended the board for its commitment to the rule making and for seeking comment from the association.

Rep. Reichert asserted that the college of dentistry should maintain its reputation for high quality instruction and should permit students to have choices among examinations. Sen. Courtney inquired about the number of licensure examinations nationwide, and Rep. Upmeyer encouraged consideration of a national examination. Mr. Larew questioned the appropriateness of board members serving on testing service boards. Rep. Heaton inquired about competition among the testing service boards and urged cooperation among the interested parties. Committee members recommended that interested parties resolve their differences and seek further public comment.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Other interested parties included David Davidson and Larry Carl of the Iowa Dental Association.

ARC 9250B No action on amendments to ch 1 appendix B regarding technical corrections in the table of reportable poisonings and conditions.

ARC 9249B No action on amendments to ch 9 pertaining to outpatient diabetes education programs. Ms. Nervig reported that the references to the respective licensing chapters of the Iowa Code have not been removed from the definitions in 9.2.

ARC 9245B Proposed amendments to ch 88 pertain to the volunteer health care provider program or VHCPP. Mr. Carl stated that there has been no dialogue between the Iowa dental association and the department in regard to the rules and expressed concern about indemnification and about the definitions and their applicability to rules beyond ch 88. Mr. Davidson asserted that dentistry should be defined by the dental board and expressed concern that the department's rules may limit the ability of volunteer dentists to provide dental care. In response, Ms. Nervig pointed out that the definitions in question apply only to VHCPP, which provides indemnity for the providers who participate in the program.

Public Health Department (cont'd)

Rep. Upmeyer asked whether the rules address the services that volunteer dentists may provide or only the services for which volunteer dentists are indemnified; Ms. Nervig stated that she will research the question. Rep. Frevert encouraged the interested parties to resolve their differences concerning the issues. Sen. Horn expressed appreciation for the dental care provided by volunteer dentists and encouraged the continuation of the program.

- ARC 9248B No action on amendments to ch 90, Iowa child death review team.
- ARC 9236B No questions on proposed amendments to ch 92, Iowa fatality review committee.
- ARC 9247B No action on ch 111, Iowa needs nurses now infrastructure account.
- ARC 9237B No questions on proposed amendments to 130.3 pertaining to emergency medical services advisory council representatives.
- ARC 9240B No questions on proposed amendments to ch 132 concerning the removal of references to basic care.
- ARC 9241B No questions on proposed 143.16 to 143.18, which pertain to fire department response with automated external defibrillators.
- ARC 9246B No action on ch 186, governmental public health advisory bodies.

HUMAN SERVICES DEPARTMENT Nancy Freudenberg and Wendy Rickman represented the department. Other interested parties included Mary O'Brien on behalf of Visiting Nurse Services of Iowa.

- ARC 9254B No action on 7.1 or 79.16 pertaining to the electronic health record incentive program.
- ARC 9225B No questions on proposed amendments to ch 47, promoting healthy marriage program.
- ARC 9256B No action on amendments to 78.10(4) regarding Medicaid coverage for pharmaceutical compounding supplies.
- ARC 9257B Amendments to ch 118 pertain to the child care quality rating system (QRS). Ms. Freudenberg reported that the child care nurse consultant function for assessment of the facility's health and safety has been included in the quality rating system but is not required. Ms. O'Brien expressed gratitude to the department for the reinstatement of the child care nurse consultant function but expressed concern about the lack of licensing requirements for and oversight of child care in Iowa.
- ARC 9258B No action on amendments to ch 176, which pertain to reports, referrals and assessment, and safety plans related to dependent adult abuse.

PUBLIC SAFETY DEPARTMENT Mike Coveyou and Brian Young represented the department. Other interested parties included Chris Rager of the National Rifle Association.

- ARC 9238B No action on ch 91, weapons and Iowa professional permits to carry weapons. Mr. Coveyou stated that the rules are specific to professional permits for nonresidents and for state employees who carry weapons as part of their duties. Mr. Rager expressed thanks to the department in the implementation of the statute by rule.
- ARC 9235B No action on amendments to ch 226, which update national standards adopted by reference that pertain to liquefied petroleum gas. Mr. Coveyou reported that one substantive change has been made. On or after January 1, 2012, the use of railroad tank cars in stationary propane service will be prohibited.
- ARC 9234B Amendments to chs 500 and 502 relate to electrician and electrical contractor licensing. Mr. Coveyou stated that a substantive change has been made. Licensees on active military deployment for 91 or more consecutive days may, upon request, have their licenses "tolled," which means that the expiration date of the license will be delayed for one or two calendar years depending on the number of days the licensee is deployed. Rep. Frevert asked how affected parties will be informed of this change. Mr. Coveyou stated that the public defense department will be informed, and Mr. Young noted that the license renewal form offers a mechanism for communicating this information.

Committee business The minutes of the November 9, 2010, meeting were approved.
The next meeting was scheduled for Tuesday, January 4, 2011, at 9:30 a.m.
Mr. Royce will invite new committee members to the January meeting.
Mr. Royce introduced Jack Ewing, new legal counsel to the committee. Rep. Frevert thanked Michael Duster for his service to the committee.
The committee expressed best wishes to Mike Coveyou on the occasion of his recent marriage.

Adjourned The meeting was adjourned at 1:10 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn